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IN THE

Supreme Court of the United States

October Term 1975

No. 74-1631

WYN RUMMLER,
Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Appellee.

On Appeal from the Court of Appeal of California
Second Appellate District

SUPPLEMENTAL BRIEF

WYN RUMMLER
1522 North Mariposa Avenue
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In Propria Persona

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TOPICAL INDEX

Page

The Withdrawal Of Appellant's Status To Act In Propria Persona and His Jailing For Failing To Hire An Attorney Were A Flagrant and Knowing Violation Of Law 3

The Release Of The Jewelry To Mrs. Fleigel Was A Flagrant And Knowing Violation Of The Law And Was Intended To Damage Appellant's Reputation 8

The License Revocation Proceeding Against Mrs. Uber Was An Attempt To "Legalize" The Release Of The Jewelry By Further Deception. It Suggests That The Cosmetology Board's Subsequent Support Of Legislation To Correct Licensing Inequities Is A Camouflage 12

To Uphold The State Court Disposition Of This Case Could, Because Of Its Evident Connection With The Calderon Matter, Bring The Judicial System Into Such Disrepute As To Cause Severe Problems Of Public Safety 15

All Of Appellant's Allegations As To The Proceedings Below Are Verifiable 27

TABLE OF CITATIONS

	Page
Brown v. United States (1959) 264 Fed.2d 363, 369	25
Faretta v. California No. 73-5772	1, 3, 6, 25
Johnson v. Louisiana (1972) 406 U.S. 356	23
Loder v. Superior Court (1974) 43 Cal.App.3d 231	24
Morrison v. State Board of Education (1969) 1 Cal.3d 214	17
Neagle, In re (1890) 135 U.S. 1	22
People v. Burnick (1975) 14 Cal.3d 306	23
People v. Feagley (1975) 14 Cal.3d 338	23
People v. Sharp (1972) 7 Cal.3d 448	3, 6, 25
Pettit v. State Board of Education (1973) 10 Cal. 3d 29	17
Whitcomb v. Emerson (1941) 46 Cal.App. 403	2
Williams v. Florida (1970) 399 U.S. 78	23
Zitney v. State Bar (1966) 64 Cal.2d 787	19

STATUTES CITED

	Page
Business and Professions Code	
Section 7321	28
Section 7325	28
Section 7415	28
Penal Code Section 288a	18

OTHER AUTHORITIES CITED

	Page
Opinion by Los Angeles City Attorney No. 74-174	16

APPENDICES

		Page
Appendix W	Assembly Concurrent Resolution No. 103	31
Appendix X	Memo, Contempt Order, Transcript Pages	33
Appendix Y	Order by Court of Appeal	40
Appendix Z	Dr. Aronsohn's Declaration, Transcript Page	42
Appendix Z-I	Order by Superior Court	46
Appendix Z-II	Order by Court of Appeal	47
Appendix Z-III	Transcript Pages	49

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Subsequently to the Jurisdictional Statement, this Court has acknowledged in *Faretta* v *California* No. 73-5772 that a criminal defendant has a Constitutional right to act in propria persona.

Subsequently to said Statement, Assembly Concurrent Resolution No. 103, copy attached as Appendix W, has been submitted to the California Legislature. It is pursuant to newly expressed wishes by the Board

of Cosmetology that a person confining his practice to one branch of cosmetology not be prosecuted for doing so without a licens[e]. The resolution duplicates appellant's arguments and his citation of *Whitcomb* v *Emerson* (1941) 46 Cal.App. 403 in urging that existing licensing regulations are unreasonable. It says that the Board is backing Assembly Bill No. 2386, which proposes limited licensing for a person confining his practice to one branch of cosmetology.

These developments can be used for arguing that the issues of this appeal are moot; that is, that now that the self representation right has been affirmed and now that the California Legislature appears to be correcting the licensing inequities complained of, there is no issue remaining in this appeal of sufficient public importance to merit plenary consideration.

On the contrary, the right of the individual to rely on the law is still very much an issue herein, and non-intervention by this Court would invite dangerous alternatives.

Moreover, the Assembly Concurrent Resolution appears to be part of a concert of deceitful gestures, made in anticipation of appellant's plans in this matter. Said plans are, after this Court has ruled on his case, to present it to the public, along with the facts stated in the Calderon applications to this Court Nos. 73-1615 and 74-133, as proof of an internal attack on the United States.

THE WITHDRAWAL OF APPELLANT'S STATUS TO ACT IN PROPRIA PERSONA AND HIS JAILING FOR FAILING TO HIRE AN ATTORNEY WERE A FLAGRANT AND KNOWING VIOLATION OF LAW

When appellant applied to the Court of Appeal for restoration of said status he called the Court's attention to the following passages in *People* v *Sharp (1972)* 7 Cal.3d 448:

> "We do not purport to hold herein that an accused is not entitled to represent himself in a proper case but only that such right is not a constitutionally protected one. We have heretofore set forth standards by which a trial court can determine the competency of an accused who wishes to represent himself as a condition for granting such motion (see *People* v *Floyd* (1970) 1 Cal.3d 694, 702-703 . . . and cases cited therein) and we do not now depart therefrom. . . . Aside from any specific provision, as we have earlier indicated, due process considerations may require that a defendant be afforded the right of self-representation . . . in those rare instances where the denial may truly offend the concept of ordered liberty."

Even the dissenting Justices of this Court in *Faretta* v *California supra* appear to concede that, albeit "in an extraordinarily small number of cases," a defendant may act as ably in propria persona as by attorney. They also seem to qualify their statement that a trial judge should have discretion to deny a defendant self-representation with the proviso, "when the interests of justice so require."

At the time of appellant's arrest he was informed by Investigator John C. Blanchard of the Department of Consumer Affairs that the District Attorney's Office had investigated appellant's background thoroughly and had evaluated his legal abilities as excellent. Attached as Appendix X is a memo describing appellant as "legal strategist, top notcher of legal talent." Said memo was apparently prepared by either the District Attorney's, the County Counsel's or the State Attorney General's Office, and was eventually given to appellant by the Probation Department. It is consistent with an observation concerning appellant by Prosecutor Carstairs, "He is obviously not an unschooled person in the law . . . a man who has shown himself to be very lawwise." (Reporter's Transcript, page 849, line 27; page 845, line 19, 20)

The District Attorney's Office had enough records concerning appellant to be aware of the following facts, most of which were also contained in a declaration appellant filed with Judge Thelin when he made his motion for self-representation:

During the postwar forties appellant, who at that time had had years of experience in law office employment, was repeatedly arrested for investigation by the Los Angeles Police. Thereby he learned a lot about the technique of interrogation.

In 1949 appellant was a defendant in propria persona on a charge of a sex offense against some under age girls. Appellant was incarcerated in Los Angeles' former and infamous Lincoln Heights Jail during

these proceedings, which lasted 45 days and were dismissed after two hung juries. Many of the so-called policemen assigned to that jail were not temperamentally qualified to work anywhere but in Auschwitz, and their overriding duty was to try to wear out anyone who persisted in a not guilty plea. They gave appellant a crash course in all the gimmicks that are used to pressure a defendant into throwing in the sponge.

Being innoculated against these things and experienced in arrest and trial procedure, appellant had qualifications which courts have customarily treated as sufficient for granting pro se status to any reasonably articulate defendant regardless of whether he had appellant's added legalistic skills.

During the 1949 prosecution appellant also learned, by mistakenly doing them, many of the things a defendant should *not* do in front a jury if he would would prefer an acquittal to a deadlock. In subsequent years appellant served as a juror himself in civil and criminal cases and had additional experience in front of judges and jurors as a litigant in propria persona in civil cases.

The acquittal in the Calderon prosecution, being in part due to appellant's investigative and trial work, did not suggest that appellant was badly trained.

While the present charge was being prosecuted appellant was, during continuances, again serving as a juror himself in criminal cases, this time in the Federal courts. These courts knew that appellant was doub-

ling as a defendant, but waived the customary objections because of the special circumstances of the case. Following Federal verdicts appellant was alternately consulted by the U.S. Attorney and the defense attorney as to why he had won or lost. Thereby appellant gained special insights into the problems of both sides.

If appellant did not meet the criteria by which, even according to the doctrine of *Sharp* and the dissenting views in *Faretta,* a defendant is qualified to represent himself—who could?

A copy of the contempt order is attached as part of Appendix X, accompanied by a page from the Reporter's Transcript of the contempt hearing, and a page from the Transcript of subsequent Superior Court proceedings in which Prosecutor Carstairs gave his version of the matter. While some of the wording on the contempt order has been crossed out, a comparison with the accompanying attachments will show that the order is very libelous.

When appellant applied to the Court of Appeal for restoration of his pro se status, that Court, in the persons of Justice Wood, Justice Lillie and Justice Thompson, stayed further proceedings against appellant, not staying them against Mrs. Uber, allegedly to give the Court time to consider the matter. Three months later, the Court having issued no further order, appellant sent the Justices a letter inquiring as to the reason for the delay. The Court then issued an order, Appendix Y, stating it was adopting a suggestion by

the County Counsel that another hearing in the Municipal Court be held to determine whether appellant was competent to represent himself. The reason given was that it appeared impossible to obtain a Reporter's Transcript of the hearing before Judge Thelin, and that, therefore, the record did not show whether Judge Thelin's order granting appellant pro se status was based on an adequate showing.

Undoubtedly the Justices assumed that the second hearing would be held before Judge Di Giuseppe, who could be counted on to find appellant unqualified.

However, appellant had challenged Judge Di Giuseppe for cause, so the hearing was held before Judge Harold Sinclair who restored appellant's pro se status with the comment, "It seems to me that the work I have seen in these petitions and so forth is superior to a lot of work I have seen from lawyers. Much superior. (Reporter's Transcript of Hearing on Qualifications of Defendant to Act in Propria Persona, page 22, lines 26-28)

Due to the Court of Appeal's long delay in acting on appellant's petition, Mrs. Uber was tried separately. Thereby she was deprived of the benefit she would have had from appellant's courtroom know-how had they been tried together. No doubt the Justices intended this.

THE RELEASE OF THE JEWELRY TO MRS. FLEIGEL WAS A FLAGRANT AND KNOWING VIOLATION OF THE LAW AND WAS INTENDED TO DAMAGE APPELLANT'S REPUTATION

During the trial, in the jury's absence, Judge Light repeatedly said there was no merit to the grand theft charge, either on the embezzlement or the fraudulent fee theory. and he was only persuaded from dismissing it when Mr. Carstairs said this would prejudice the medical charge. Following the trial Judge Light reiterated his understanding that the jewelry had been deposited as security for the balance of the contract and added, "I agree, frankly, that you were not guilty of grand theft." He added that the medical conviction "does not require any intent on your part to violate the law." (Reporter's Transcript, page 1229, line 27 to page 1230, line 1)

Nevertheless, Judge Light also said, "No doubt in my mind that Mrs. Fleigel has suffered injury as a result of the treatment." This "injury," he said, gave Mrs. Fleigel grounds for a civil action against appellant, and "If I were the trier of fact in this case, which I were not, and if this was a civil case, which it was not, about who should have the jewelry, the jewelry would go back to Mrs. Fleigel." On that ground he denied appellant's motion for return of the jewelry and said it would be released to Mrs. Fleigel if she posted a bond or other guarantee that the money secured by the jewelry would be paid to appellant if the conviction were reversed. Later at a hearing of which appellant

was not notified, Judge Light released the jewelry to Mrs. Fleigel without the posting of any such bond or guarantee. (Reporter's Transcript, page 1232, lines 22, 23; page 1228, lines 1—4; page 1234, lines 16—28; Jurisdictional Statement, page 101)

The only injuries to Mrs. Fleigel that Judge Light could have been referring to were the rope-like scar on her throat, the depigmented area on her forehead and her drooping lower eyelids. In order to have believed that she suffered these through the procedure he would have had to disbelieve the "before" photo showing that she already had these disfigurements and to have disbelieved Mrs. Fleigel's own testimony verifying the photo. (Jurisdictional Statement, pages 85—88) To regard her as anything but a calculating liar who used her pre-existing disfigurements to deceive the examining physicians Judge Light would have had to disbelieve the testimony of these physicians. One of them, Dr. David Clifford Baer, testified as follows:

> Q Would you say that you have no independent recollection of this examination, or is that too strong a way to put it?
>
> A That's much too strong. Most of my patients don't lie to me. So, this came on, it was burned in my memory. (Reporter's Transcript, page 552, lines 1—5)

Dr. Aronsohn, testified as follows:

> Q Dr. Aronsohn, these conditions that you observed on Mrs. Fleigel, the rope-like condition on her chin—did you observe any scars on her chin?
>
> A Well, that is a scar.

Q Yes, Now that condition—I believe you've already answered the question—you stated that that could have existed before she had the treatment.

A She said it didn't.

Q What?

A But, again, I'm going on the history, the testimony of the patient. I assumed she was being honest and truthful. (Reporter's Transcript, page 446, line 19, to page 447, line 2)

The following matters additionally support the conclusion that when Mrs. Fleigel approached Mrs. Uber she planned to frame her, and that this plan derived from officials who subsequently controlled Judge Light's disposition of the jewelry.

Mrs. Fleigel testified that the jewelry was worth $2300 to $2400; that she had no prior knowledge of appellant or Mrs. Uber; that she made a down payment of $800 by money orders of which she retained copies that she later presented to the prosecuting office; that the jewelry was to secure a balance of $370; that she obtained no written understanding of the terms on which the jewelry had been deposited or a receipt. (Reporter's Transcript, page 361, lines 12—17; page 398, line 25 to page 399, line 8; Uber Preliminary Hearing Transcript, page 21, lines 20—22; Rummler Preliminary Hearing Transcript, page 13, lines 9—10; Clerk's Transcript Augmentation, page 16)

Having enough business sense to retain copies of the money orders, Mrs. Fleigel would hardly leave that much jewelry with people she did not know without more assurance than their word that the jewelry would be returned. That assurance would seem to have been a prior understanding with the authorities that the jewelry would be recovered through a search warrant.

She told Investigator Gentile that the jewelry was worth $800. (Clerk's Transcript Augmentation, page 14) She told Mrs. Uber the same, and it was only at the trial that she gave the actual value of $2300 to $2400.

This mark-down forestalled suspicions as to why she would leave several items of jewelry with a total value so much more than the amount being secured when fewer items would have been sufficient. It fits a plan to beef up the theft charge.

Mrs. Fleigel may have been sent to Nona's Youth Fount to discredit the evidence appellant had uncovered in the Calderon prosecution, as suggested in the Jurisdictional Statement, and she may not have been. Either way the District Attorney's Office had reason to forestall an investigation of the question. Such investigation was likely to reveal the unlawful conduct by major public officials in the Calderon prosecution and in the subsequent teacher dismissal proceedings.

If appellant were convicted of a charge involving moral turpitude he would not have the stature to bring about such an investigation.

However, Mr. Carstairs' intended strategy of proving only technical grand theft, that is, obtaining a fee

with intent to violate Section 7415, would not imply sufficient moral turpitude to satisfy his official superiors. Therefore, these officials apparently pressured Mr. Carstairs to include embezzlement and tried to facilitate a conviction by having appellant's pro se status withdrawn.

When this failed they evidently pressured Judge Light to give the jewelry to Mrs. Fleigel, with the idea that this would, by implying appellant's claim on the jewelry was illicit, discredit the acquittal.

Judge Light must have realized that appellant would protest on appeal if he learned that the jewelry had been released to Mrs. Fleigel without a bond. The manner of the release deceived appellant into believing it had not occurred. He would not be aware of it now but for an exploratory search he made of the Clerk's files after this appeal was in process.

THE LICENSE REVOCATION PROCEEDING AGAINST MRS. UBER WAS AN ATTEMPT TO "LEGALIZE" THE RELEASE OF THE JEWELRY BY FURTHER DECEPTION. IT SUGGESTS THAT THE COSMETOLOGY BOARD'S SUBSEQUENT SUPPORT OF LEGISLATION TO CORRECT LICENSING INEQUITIES IS A CAMOUFLAGE

After appellant had filed his Briefs in the Court of Appeal, showing that the medical conviction would boomerang regardless of what that Court did, the prosecutor's advisors must have realized that the return of the jewelry had made their positions even worse.

While an acquittal does not bar every civil action which may arise from the facts of the case, the criminal trial judge is not entitled to make any disposition of property seized from the defendant according to what the judge claims the outcome of a civil suit should be.

It was then that the Attorney General's Office decided to get Mrs. Uber's license revoked on the claim that she had caused Mrs. Fleigel's disfigurements by using more than 10 percent of phenol. This, inasmuch as it would be through a civil proceeding, would make the release of the jewelry to Mrs. Fleigel seem irregular only in a technical sense.

To prevail the Attorney General's Office prepared a declaration for Dr. Aronsohn's signature which stated that Mrs. Fleigel's disfigurements had been caused by Mrs. Uber's procedure. Like the search warrant affidavit, the declaration put words into the doctor's mouth as though he had estimated the proportion of phenol, assuming phenol was used, to be 50 to 88 percent. As can be seen from the copy of the declaration attached as Appendix Z, Dr. Aronsohn crossed out this part of the declaration. This was consistent with the doctor's testimony that, while phenol was a possibility, he had no way of determining what caustic had been used or its percentage. (Reporter's Transcript, page 425, lines 4—12; page 435, lines 22—27) Nevertheless Deputy Attorney General Dora Levin represented to the Hearing Officer that "the declaration of the doctor states that phenol was used." (Transcript of Administrative Hearing No. 1682 OLA

L-7528, page 3, lines 18—21. A copy of said page is attached as part of Appendix Z) As Dr. Aronsohn testified, his conclusion that the procedure caused the disfigurements is based on Mrs. Fleigel's statement that she did not already have them. Obviously, the Attorney General's Office did not inform the doctor of its awareness that Mrs. Fleigel's statement was untrue.

Prior to his trial appellant had seen and admired some of Dr. Aronsohn's work as a cosmetic surgeon. Much of this work is done for older women, and if the patient has developed her mind, she will have the appearance of youth without its drawbacks, a quality appellant finds specially attractive in a woman. Therefore, in cross-examining Dr. Aronsohn, appellant made sure that the record would present the doctor in a psychologically favorable light.

In California, because of rising malpractice insurance costs, making a commensurate living as a doctor is ceasing to be any cinch. The situation has made doctors particularly unsympathetic to the faking of malpractice claims.

Appellant expects to prove that the Board of Cosmetology realized too late what a pickle it would be in when the public, including the California Medical Association, heard about this matter. He expects to further prove that the Board was trying to extricate itself when it sponsored the views expressed in Assembly Concurrent Resolution No. 103, Appendix W.

TO UPHOLD THE STATE COURT DISPOSITION OF THIS CASE COULD, BECAUSE OF ITS EVIDENT CONNECTION WITH THE CALDERON MATTER, BRING THE JUDICIAL SYSTEM INTO SUCH DISREPUTE AS TO CAUSE SEVERE PROBLEMS OF PUBLIC SAFETY

In the United States it is a fact as well as a governmental premise that the security forces do not control the People but are instruments of the People. Therefore, the main deterrent to vigilante law is the People's belief that the duly constituted courts will follow rules more productive of justice than a posse would.

In California there are ominously increasing signs of the courts losing the ability to command sufficient respect, even from the security forces, to function adequately. The Los Angeles Herald Examiner of July 3, 1975, reports that during a strike by employees of Santa Clara County three court clerks defied an order by Judge Bruce Allen declaring the strike illegal. When Judge Allen sentenced them for contempt his own clerk, Kalvin Hara, resigned to join the picket line. The Los Angeles Times of August 9, 1975, reports that in Napa County 48 striking deputy sheriffs continued picketing in disregard of a court order. Recently, when about two thirds of the San Francisco police force walked out on strike, they ignored an order by a Superior Court Judge prohibiting the strike. The San Francisco Examiner of August 24, 1975, reports that when officers who remained on the job responded to crime emergencies they were confronted and jeered

by striking patrolmen, and that in many cases the tires of their cars were slashed. One officer found the brake line of his car had been cut.

The professionalized element of the San Francisco police did not join in the strike, and that element in the Los Angeles police would not join any strike either. However, the pros never constitute a majority in even the best of police departments, and in maintaining public order without the Constitution the pros have to contend with problems caused, not only by civilians, but also by some of their fellow officers.

When the appellate courts also default, the problems of the police are multiplied, as are the problems of the professionalized lower court jurist in obtaining respect for his orders.

In this regard terrible damage will result if judges and policemen become subject to political blackmail through the threat of homosexuality charges brought without proper procedural safeguards.

The purpose behind the appellate decisions in the Calderon teacher dismissal actions was to establish a path that would enable this. A further step in this scheme was an opinion issued by the Los Angeles City Attorney on May 19, 1975, No. 74-174, entitled *The Power of the Board of Civil Service Commissioners to Establish Certain Employment Standards for Police Officer Candidates and to Conduct Background Investigations.*

This opinion purports to be merely a conclusion that "decisional law" requires, under certain conditions, the employment of self-announced homosexuals as police officers. Actually it is part of a gimmick to enable administrative determinations that police officers are homosexuals despite denials by the officers. The "proof" in such cases is to be of the kind used to uphold the Calderon teacher dismissal proceedings. The same cases that the Court of Appeal cited against Mr. Calderon, *Morrison* v *State Board of Education* (1969) 1 Cal.3d 214 and *Pettit* v *State Board of Education* (1973) 10 Cal.3d 29, are cited in the City Attorney's opinion as authorizing the extension of these standards into the Police Department. The opinion noted that Assembly Bill No. 489, taking private homosexuality out of the criminal purview, was nearing passage.

Governor Brown's signature on the bill was hardly dry when administrative rather than criminal procedure was used to perfer charges of homosexual assault against a Los Angeles Police Officer, Miss Colleen Clenny. It, too, was a dismissal proceeding, in which Miss Clenny had no more rights than were afforded to Mr. Calderon, with the exception of a free transcript. On the face of the matter, there was no evidence against Miss Clenny that would even enable a criminal complaint, much less a conviction, but she was dismissed, nevertheless, with the same stigma that accompanies a guilty verdict.

Not long afterwards a Los Angeles County Superior Court Judge was arrested on a charge of violating the same statute, Penal Code Section 288a (homosexual oral copulation), that Mr. Calderon had been charged under. Since the offense was now defined by law as a relatively trivial misdemeanor, the Judge had far fewer defense perogatives than Mr. Calderon had.

As a felony defendant Mr. Calderon had received a preliminary hearing with a free transcript thereof, an automatic continuance to the date of Superior Court arraignment, another automatic continuance to the date of another pre-trial hearing, this one on illegal search, a free transcript thereof and another continuance while the illegal search decision was reviewed. Thereby Mr. Calderon learned the prosecution's principal testimony in advance and had plenty of time to prepare a defense. By means of the transcripts he could nail the prosecution witnesses on inconsistencies.

As a misdemeanor defendant the judge was not entitled to the above pre-trial procedures. He would hear the prosecution's testimony for the first time at the trial, after which he would be afforded perhaps a half hour recess before putting on his defense. Since the charge was now labelled a misdemeanor, some jurors would tend to vote for conviction more lightly than they would in a felony proceeding.

Although the judge denies guilt, under the circum-

stances he accepted a standard plea bargain, *nolo contendere* to "trespassing." (Mnc. Ct. No. 521454)[1]

The case has been referred to the Commission on Judicial Qualifications for possible "disciplinary action." Since, in civil proceedings arising from criminal charges, a plea bargain is not proof of guilt, this means the Commission may make an independent "civil" determination as to whether the original criminal charge was true.

The California Supreme Court has ruled in *Zitney* v *State Bar* (1966) 64 Cal.2d 787 that an attorney's license may be revoked on the precise charge of which he was acquitted by jury in a criminal trial. Its premises seem equally applicable to judges, on the argument that a judge, being an exemplar to, among others, "children of tender years," should not have the benefit of reasonable doubt.

The salary of a California Superior Court Judge, about $40,000 a year, is, like the salaries of high ranking police officers, whopping good pay by the standards of the man in the street. This, combined with the ceremonial respect a judge receives, can put him in a dream world in which he forgets that his income is only about one one-thousandth of that of one of California's First Families, such as the Chandler's, whose Times-Mirror Company netted forty million in 1973, and who are among the backers of the internal attack.

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[1]Appellant does not imply impropriety in the judge's arrest. When this appeal and the Calderon applications are published by appellant, the above case number and the names of the other defendants to such charges with the exception of Mr. Calderon will be omitted.

Some judges seem to have imagined that they themselves were immune from prosecution, and that, therefore, erosion of the rights a defendant presented no danger to them personally. Several recent instances of the indictment and conviction of judges have been bringing them back to earth.

Probably a lot of judges have agreed with Los Angeles Police Chief Davis that the private citizen's right to have firearms should be retained. They have more reason to agree now that some policemen are using withdrawal of their protection as a means of unionized blackmail. Nevertheless, several prominent State Senators and Assemblymen are pushing Assembly Bill No. 2426 which would require private citizens to surrender their handguns to the police.

Recently, during a traffic altercation, a Los Angeles County Superior Court Judge threatened the other driver with a handgun. One can believe not a few judges would be inclined these days to do likewise to any policeman who tried to deprive them of their weapons.

Not every policeman would disapprove, particularly those planning to become judges themselves. They remember what happened to Judge Harold J. Haley in 1970 when he and a prosecutor were kidnapped from his courtroom in Marin County. The police knew that a shotgun was taped to the judge's neck ready to blow his head off if an attempt were made to thwart the kidnapping. They also knew that they could not fire

on the kidnappers without also firing on the prosecutor. Nevertheless, the police opened fire. One of their shots crippled the prosecutor for life, and the judge, of course, was killed. After that several judges preferred to carry handguns themselves rather than entrust their protection to the police.

The judge who drew his handgun during the traffic altercation is Charles Older. This is the same jurist who, in the face of press clamor and distortion, maintained an iron-willed insistence that any defendant has a right to be tried without inflammatory publicity. Thereby he defeated a project, initiated by Evelle Younger and culminating in the William Farr contempt matter, aimed at destroying this right.

Underneath the facade, American judicial temperament has not changed any since the days of the Honorable Stephen J. Field who, before becoming a Justice of the U.S. Supreme Court, was first a California lawyer, then a California Legislator and next a Justice of that State's Supreme Court. During his law practice one Judge Turner, whose rulings Mr. Field frequently took exception to, resented this to the point of telling people he had in mind provoking a gunfight with Mr. Field. Judge Turner was a much better shot, so Mr. Field sought advice from Justice Nathaniel Bennett of the California Supreme Court. Justice Bennett recommended that Mr. Field wait in the street and shoot Judge Turner on sight. Instead Mr. Field started practicing with a pair of revolvers and appar-

ently when Judge Turner heard about this it dissuaded him.

Later, as a U.S. Supreme Court Justice, Mr. Field rendered a decision that one of the litigants disagreed with. The litigant, the Honorable David S. Terry, formerly Chief Justice of the California Supreme Court, was in the courtroom and he showed his disapproval by knocking down a marshal, breaking one of the marshal's teeth and pulling a knife on some other marshals. Justice Field sentenced Mr. Terry, with whom he had formerly served on the California Supreme Court, to six months, and saw that he served every day of it. When Mr. Terry was released he accosted Justice Field in a California restaurant and began slapping him around. Justice Field had obtained a bodyguard in anticipation of this, and the bodyguard shot Mr. Terry through the heart. It looked like premeditated excessive force, so Justice Field and his bodyguard were arrested on murder charges. However, they were more or less cleared. (*In re Neagle* (1890) 135 U.S. 1)

In drafting California law Justice Field's contributions had been prodigious. Mr. Terry had been noted as an honest and able jurist.

The moral is: the fact of a judge being a pro is no guarantee he would not resort to curbstone justice if this seemed to be the only justice available, and in such the case he would not be deterred from violence by the fact that the object of it was another judge.

Collaterally, in the course of appellant's case before

the State courts, it became evident that he was using a modification of the rabble rousing technique, and that this technique did not depend on the cooperation of the major press facilities. It was obviously calculated to inflame the more educated and affluent of the rank and file, the judiciary and the police, against members of their group who had been feathering their own nests by assisting a plan to reduce their colleagues to the level of little brothers of the rich.

After it was also evident that the medical conviction would not thwart appellant's plans the California Supreme Court began making moves that suggested it was trying to create a refutation of the charges appellant would make to the public. These moves were decisions which superficially contradict appellant's charges that the appellate courts have been undertaking to eliminate the necessity of reasonable doubt, jury unanimity etc. for convictions.

Among these decisions are *People* v *Burnick* (1975) 14 Cal.3d 306 and *People* v *Feagley* (1975) 14 Cal.3d 338. These decisions adopt one of the main points of the Calderon appeal to this Court No. 73-1615, i.e., that it is unjust to stigmatize a person as a sex offender through a civil proceeding. *Feagley* expressly rejects the doctrine sanctioned by a majority of this Court in *Johnson* v *Louisiana* (1972) 406 U.S. 356 that a hung jury is sufficient to send a person to prison if a majority vote for conviction. By inference it also rejected the doctrine of *Williams* v *Florida* (1970) 399 U.S. 78 wherein this Court with the exception of Mr. Justice

Marshall ruled that a six member jury was sufficient for criminal cases carrying life imprisonment.

Another such move occurred January 16, 1975, when the California Supreme Court granted a hearing in *Loder* v *Superior Court* (1974) 43 Cal.App.3d 231. In this case a public school employee complains that the records of a dismissed criminal charge against him were used as grounds for non-reemployment. He seeks to have the records sealed.

Concurrently with the granting of a hearing in *Loder,* Senate Bill 1278 has been introduced in the California Legislature. This bill provides that whenever a criminal charge has been acquitted or dismissed the records shall be sealed and the arrest and all proceedings thereunder shall be deemed not to have occurred.

This would make a teacher dismissal action based on acquitted or dismissed charges impossible. Therefore, when appellant presented the Calderon matter to the public he would seem to be discussing a problem that had already been corrected.

The plan behind these developments is, apparently, to present them as new statutary and/or "decisional" law, with the Calderon teacher dismissal decisions being treated as res judicata. Since a decision is not res judicata if it is arrived at through criminal collusion it was important to the Court of Appeal not to encourage an investigation of those decisions. Therefore, it could not reverse the medical conviction herein since

this would give appellant a plume that would add to his ability to bring about such an investigation.

In *Faretta supra* there is an intriguing about face from this Court's position on February 20, 1973, as reported in 410 U.S. 944. On that date this Court, with the exception of Mr. Justice Douglas. denied a petition No. 72-5503 by the defendant for certiorari in *People* v *Sharp supra,* the decision which denied the right of self-representation. There is an equal contrast provided by Justice Burger's 1975 dissent in *Faretta* wherein he said, " . . . there is nothing desirable or useful in permitting every accused person, even the most uneducated and inexperienced, to insist on conducting his own defense." In 1959 he had said in *Brown* v *United States* 264 Fed.2d 363, 369, that although compulsory aid from amicus curiae to a pro se defendant would sometimes be appropriate in complicated cases, "The accused should, however, still be permitted to present his own case without reference to what is presented by the amicus curiae."

Oviously, it would be highly improper for appellant to herein impugn the motives of any Justice of this Court. Such an accusation, if any, would be permissible only before some other body. It is essential to appellant's standing before the public that the record hereof show him to have observed every propriety and courtesy before this Court.

However, it may be constructive to point out some of the speculations that may develop in the public if this appeal is dismissed.

The fact that appellant would eventually take the pro se question to the Court was evident when this Court accepted the application from petitioner Faretta. It might be speculated that this Court, aware that the attempted destruction of the self-representation right had to be abandoned in order that appellant would not have this point to present to the public, reasoned it would be better to give the victory to someone other than appellant. Appellant might use it in the way that, according to Mr. Justice Blackmun in his *Faretta* dissent, some defendants will use the self-representation right, i.e., "for personal or political self-gratification."

It might also be speculated that it seemed good politics to uphold the self-representation right by a split decision in order not to completely offend the people Evelle Younger was lobbying for when he tried to destroy that right by trickery at the ballot box. A further speculation might be that the dissent was intended to lend some seeming legitimacy to the three day jail sentence, since a split decision would imply that the self-representation issue was one on which reasonable minds could disagree.

Such speculation is sure to follow any disposition of this appeal that does not include reversal of the medical conviction, vacation of the contempt order and damages for the false imprisonment.

Appellant submits that, in view of the imminence of a break-down of law and order in California, this is

no time for this Court to issue a decision that suggests that justice is unobtainable through the judicial process.

ALL OF APPELLANT'S ALLEGATIONS AS TO THE PROCEEDINGS BELOW ARE VERIFIABLE

As alleged in the Jurisdictional Statement, appellant sought damages for the jailing through mandamus as providing for by California law. If it is claimed that there is some irregularity in combining an appeal from the mandamus decision with the appeal from the trial judgement, appellant submits that this was cured when the Court of Appeal refrained from treating the matter as improperly before it and instead tried to make it appear that the jailing had not occurred.

It may be contended that some of the citations from various transcripts etc. are of things not in the record. Nevertheless, these things occurred within the proceedings below.

While the Clerk was preparing the record for appeal Judge Light's attitude was typified by the fact that he would not even allow the transcript of the preliminary hearing to be included. In considering a motion by appellant for augmentation of the record the Court of Appeal's attitude was about the same.

Appellant encountered a similar problem in having the trial court record show that the Constitutional issues were timely raised. He first raised these issues in a habeas corpus application filed in the Superior Court

on August 23, 1972. However, appellant's copy of the minute order attached as Appendix ZI and appellant's stamped copies of the documents he filed are the only remaining evidence of the application. Everything else has disappeared from the Clerk's files.

Appellant again raised the Constitutional issues in his amendment to his petition to the Court of Appeal for mandamus and/or certiorari. The copy of that Court's order attached as ZII shows that the amendment was returned to appellant without explanation.

Appellant did manage to get his challenges of Business and Professions Code Section 7321, 7325 and 7415 into the record of the proceedings before Judge London. However, at the behest of the Attorney General, the Court of Appeal relegated much of the Reporter's Transcript of these proceedings to a sort of "unofficial" portion of the record.

In view of what appellant has been up against in building the record for appeal, appellant submits that, if the Attorney General makes any statement like the one in the Opinion that "Our attention is invited to no part of the record supporting the claimed error," this Court should add a grain of salt to it.

Judge Light is ordinarily a very superior jurist. To show that this assertion is not idle flattery, attached as Appendix ZIII are copies of pages 861-863 of the Reporter's Transcript. They contain some of the more amusing exchanges during the trial and show Judge Light's flair for conducting same.

Appellant, who enjoys a game of wits with danger involved, wishes to show his appreciation to the judge for providing one. The most appropriate way to do this, appellant feels, is to urge all procedural safeguards for a defendant, in case Judge Light ever has need of them himself.

Respectfully submitted,

WYN RUMMLER
In Propria Persona

APPENDIX

APPENDIX "W"

CALIFORNIA LEGISLATURE—1975-76 REGULAR SESSION

Assembly Concurrent Resolution No. 103

Introduced by Assemblyman Bane

June 26, 1975

REFERRED TO COMMITTEE ON RULES

Assembly Concurrent Resolution No. 103—Relative to the practice of cosmetology.

LEGISLATIVE COUNSEL'S DIGEST

ACR 103, as introduced, Bane (Rls.). Practice of cosmetology.

This measure requests the enforcement division of the Department of Consumer Affairs to cease citing unlicensed individuals providing simple beauty services for violations of the Business and Professions Code until the Legislature acts on pending legislation.

Fiscal committee: no.

WHEREAS, The California State Department of Consumer Affairs has caused some individuals, who have been for years providing some simple beauty services, to be cited for violations of the Business and Professions Code; and

WHEREAS, Instructing such tradespeople to cease performing their services to the public seriously damages the economic well-being of those tradespeople and their dependents at a time of high unemployment and at the same time deprives their satisfied customers of service they have enjoyed; and

WHEREAS, The Fourth District Court of Appeals, in

the decision of Whitcomb v. Emerson, has held that in the absence of a limited license to practice specialized cosmetology services, it is unreasonable to require the practitioner of a limited specialty to take the full 1,600-hour cosmetology training course and successfully pass an examination on the entire field of cosmetology, including hair, scalp, and nail care; and

WHEREAS, There is legislation pending before the Legislature that will resolve the question as to whether such simple services shall be exempted from licensing or become regulated and licensed; and

WHEREAS, The intensity of interest in the problem is exemplified by the introduction of AB 2386 by Assemblyman Tom Bane, which is coauthored by Assemblyman Leon Ralph, Chairman of the Assembly Rules Committee, Assemblyman Julian Dixon, Majority Caucus Chairman, Assemblyman Alister McAlister, Chairman of the Assembly Finance, Insurance, and Commerce Committee, Assemblyman Louis Papan, Chairman of the Licensing Subcommittee, Assemblyman Richard Alatorre, Assemblyman Willie Brown, Senator Jack Schrade, Chairman of the Senate Business and Professions Committee, and Senator Bill Greene, to provide for limited licensing of those persons engaged in the practice of makeup and eyelash application and leg waxing; and

WHEREAS, The State Board of Cosmetology, which is under the Department of Consumer Affairs, is actively supporting the above-mentioned special licensing legislation; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the enforcement division of the Department of Consumer Affairs cease its activities which are putting the above-mentioned people out of work until the Legislature resolves the question through the legislation pending before it; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the State Department of Consumer Affairs, the Board of Cosmetology, and to

APPENDIX "X"

RUMMBLER

ANTI-ESTABLISHMENT
EXECUTIVE DISRUPTER
POLICE BAITER
YELLOW JOURNALIST
SIGN ERECTOR.
PAINTER
FACE REJUVENATOR
LEGAL STRATEGIST
TOP-NOTCHER OF LEGAL TALENT

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
NONA UBER and WYN RUMMLER,
Defendant s.

C.O. # 5978

WHEREAS, on the 26th day of September, 19~~x~~72 in Division 117 of the above entitled court, JAMES DI GIUSEPPE, a judge thereof presiding, and while said court was actually in session in the courtroom and engaged in ~~xxxxxxxxxxxxxxxxxx~~ the preliminary hearing of the above, No. A122256, of which said Court had jurisdiction at said time, and said named defendants, and ~~each~~ each of them in the presence of the court and said judge thereof, did then and there conduct himself in the following manner:

See EXHIBIT "A" attached hereto, and by this reference hereby incorporated as though set forth fully at length herein.

~~WHEREAS, said statements were made by said in a loud insolent, aggressive, belligerent, boisterous, harsh, offensive and contemptuous tone of voice, and with a sneering and contemptuous expression on his face and a threatening demeanor toward said court, and the judge thereof.~~

WHEREAS, said statements, acts and conduct made by said defendants, and each of them were willful and in disobedience of the lawful orders of this Court made on June 14, 1972, July 10, 1972, and September 18, 1972. That said statements and conduct of said defendants, and each of them, tended to and did obstruct the administration of justice and interfere with the orderly proceedings of the court at said time and place aforesaid, and said statements, acts and conduct did tend to and did bring the court into contempt and tended to and did interrupt its proceedings and impair respect for said court and the peace of said judicial proceedings and created a disturbance thereof, interfering with the due and orderly course of court proceedings.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED by this court that by reason of the acts, conduct and statements by said defendants, and each of them, above mentioned, said defendants were and are guilty of contempt of this court and the judge thereof and of the authority of this court, and were ~~xxxxxxxxxx~~ committed in the presence of this court while in actual session on the 26th day of September, 1972, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that for said offense and said contempt and said acts and conduct above mentioned that said defendants, and each of them, be confined in the County Jail for a term of three days, commencing forthwith. The Sheriff is directed to carry this judgment into effect and confine said defendants, and each of them, in the County Jail of Los Angeles County, State of California, for said term of three days.

Done in open court this 26th day of September, 1972.

James W. Ginsberg
Judge of said Court

7673741 2/70

You have not shown any diligence. You have willfully been disobeying the order of this Court made July 10, again on September 18, and as such this Court finds both of you in contempt of court. You are both sentenced to three days in the County Jail. Your preliminary hearing is trailed to October 6 at 8:30 a.m.

You are both again placed under order to appear on October 6 with counsel. If you fail to appear with counsel on October 6, you will again be found in contempt of court, and perhaps at that time this Court will make an order that both of you remain in custody until such time as you appear with counsel.

Do you both understand that?

Mr. Rummler?

RUMMLER: Yes, sir.

THE COURT: Mrs. Uber?

MRS. UBER: Yes.

THE COURT: That's the order of this Court.

MRS. UBER: May I say something?

THE COURT: Yes, you may.

MRS. UBER: I do have an arrangement with someone.

THE COURT: I have asked you about --

MRS. UBER: Mr. Leete. I have told you many times that he can appear for me on December 11.

THE COURT: I understand what you've told me about Mr. Leete. You have been telling me that Mr. Leete represented you in this case and that you have been talking with Mr. Leete. Mr. Leete has never made any appearances in this case. You were told to talk to Mr. Leete and have him come in, and I am not

there successive opportunities by Judge DiGiuseppe on three separate occasions to comply with a then existing order, which he had not attacked in and of itself, notwithstanding that he came to court together with Mrs. Uber on the third continued day.

He was questioned at length by the Judge and he made representations to the Judge about the efforts he had made, and I believe Mrs. Uber did. Judge DiGiuseppe. as far as I know—Well, he was absent from the bench almost an hour. He came back, recited that he had attempted to confirm the statement made to him about the lawyers contacted and except in one case he found that they—Well, to sum up—they had not been advanced in good faith, he believed, to him. That he had not been told correctly what had happened. And the order of contempt, and this is where I continue to marvel, was framed in such a way that it did specifically recite the reason for the contempt: that there had been willful disobedience with an order of the Court and certain language that had originally been framed "for loud and tumultuous conduct" was clearly and unequivocally blocked out by the clerk. And Mr. Rummler seized continually on that to argue that there had been a willful conspiracy by Judge DiGiuseppe to indicate that he had been tumultuous when he hadn't been. And he certainly hadn't been. But the order didn't recite that. The order had been crossed off

and he is still chewing on that cud. It is very disturbing.

As far as Mrs. Flaegel is concerned.

There are none so blind as those who will not see.

APPENDIX "Y"

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

WYN RUMMLER,)
Petitioner,)
v.)
MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT,) 2d Civ. No. 41236
Respondent,)
PEOPLE OF THE STATE OF CALIFORNIA,)
Real Party in Interest)

Municipal Court of the Los Angeles Judicial District
No. A 122256

ORDER

THE COURT:

WHEREAS, on February 13, 1973 County Counsel of the County of Los Angeles representing respondent court filed with this court a letter-response that, inter alia, included the following request:

"Therefore, I would request on behalf of respondent that the stay order originally issued by this Court be modified so as to permit respondent court to conduct

a hearing (with a court reporter present) concerning petitioner's ability to represent himself."; and

WHEREAS, the holding of said hearing will give to petitioner the only relief which he presently seeks and to which he is presently entitled; and

WHEREAS, there appears to be no reason why the legitimate objectives of the instant petition will not be accomplished and rendered moot by the holding of said hearing,

NOW, THEREFORE, IT IS ORDERED that the petition itself is denied and the stay order heretofore issued is terminated to permit the respondent court to proceed expeditiously with the proposed hearing.

APPENDIX "Z"

OFFICE OF ADM'N. PROCEDURE
EXHIBIT 4
AGENCY Comm.
FILE NO. 736
DATE 18 MAR 75

EVELLE J. YOUNGER, Attorney General
DORA LEVIN, Deputy Attorney General
800 Tishman Building
3580 Wilshire Boulevard
Los Angeles, California 90010
Telephone: (213) 620-2178

Attorneys for Complainant

BEFORE THE BOARD OF COSMETOLOGY

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Accusation Against:	NO. 1682
NONA UBER 10822 Ventura Boulevard North Hollywood, California 91604 Cosmetologist License No. E-51089 and Cosmetological Establishment License No. A-80213, Respondent.	DECLARATION

I, RICHARD ARONSOHN, M.D., declare as follows:

I am a Physician licensed to practice medicine in the State of California. I specialize in plastic surgery and chemosurgery. My business address is 6333 Wilshire Boulevard, Los Angeles, California.

I examined Mrs. Dorothy Fleigel on October 30, 1970. I found that she had suffered chemical burns on her entire face and the frontal portion of her neck, extending to the upper portion of her chest. Parts of her forehead and neck were completely and permanently depigmentized, and these areas were mixed in with areas of hyperpigmentation (brown spots) which would disappear in time. I found that Mrs. Fleigel's chin and neck were permanently scarred, and that her lower eyelids drooped

down and away from the corneas, causing lack of control of lachrymal fluids.

I am familiar with the use of Phenol for facial rejuvenation. In my practice, I use Phenol in strengths ~~ranging from 55 percent~~ to 88 percent, but I treat small areas at a time, because of discomfort accompanying such treatment. Based on my examination of Mrs. Fleigel, I have determined that if Phenol was used in her case, ~~the solution~~ was between 50 and 88 percent in ~~strength~~. Application of Phenol in strengths between 50 and 88 percent can produce dangerous effects, including convulsions, respiratory failure, kidney damage, and even death.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 4th day of March, 1975, at Los Angeles, California.

RICHARD ARONSOHN, M.D.

DL:ajr
01 ADM LA
74-1116

Dowdell.

HEARING OFFICER: Declaration is No. 5.

MRS. LEVIN: And finally I suppose these two documents can be admitted together. There is a notice to respondent pursuant to government code section 11514 informing her that declarations will be admitted into evidence unless she notifies me she wishes to cross examine the declarant and there is a declaration of service by mail showing that the declarations and notices were mailed to the respondent at her address of record on March 5, 1975, and I will represent to the Hearing Officer that no request for cross-examination has been received by me.

HEARING OFFICER: I wouldn't be at all surprised. Okay, the notice and declaration is Exhibit 6.

MRS. LEVIN: That concludes the presentation of evidence on behalf of the complainant.

HEARING OFFICER: As I understand it, the declaration of the doctor says that Phenol was used, it caused burns and the declaration of Phyllis Dowdell indicates that phenol was used as well as the declaration of Dorthy Fleigel who was apparently the victim.

MRS. LEVIN: That's correct.

HEARING OFFICER: Do you have a recommendation?

MRS. LEVIN: Yes. I would like to point out preliminarily I don't know whether this is apparent from the certificate or not but apparently Nola Uber is an elderly lady and the indication is that she would not return to California or practice cosmetology in California; However, I would recommend that the penalty of revocation be imposed in this case since it appears from the

APPENDIX "Z-II"

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

WYN RUMMLER, *Petitioner,*
v.
MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT, *Respondent,* 2d Civ. No. 41236
PEOPLE OF THE STATE OF CALIFORNIA, BY THEIR ATTORNEY, JOSEPH P. BUSCH, *Real Party in Interest.*

ORDER

Appellant Wyn Rummler has presented to this court for filing a document entitled "Amendment to Petition for a Writ of Prohibition and/or in the Alternative Mandate and/or Certiorari, with Supporting Memorandum of Points and Authorities." The proposed amendment consists of 94 typewritten pages and an additional document entitled "Exhibits" which consists of approximately 80 pages. There were 25 pages in the original petition. This proposed amendment to the petition was submitted for filing about 2½ months

APPENDIX "Z-I"

AUGUST 28, 1972 Department No. 100

JAMES C KOLTS Judge K M DAVIS Clerk

--------- Reporter

APPEARANCES:
(Parties and Counsel checked if present.
Counsel shown opposite parties represented.)
Joseph P. Busch, Jr. Evelle J. Younger, District Attorney by
Deputy

Case No. HC 171880

THE PEOPLE OF THE STATE OF CALIFORNIA

vs

RUMMLER, WYN

R. S. Buckley, Public Defender by
Deputy

Petition for a Writ of Habeas Corpus (re violation of Constitutional rights) is read and considered by the Court and is denied on basis of facts alleged. Clerk is directed to notify defendant by copy of Minute Order. Address: 1522 N. Mariposa Avenue, #107, Los Angeles, California 90027.

after the original petition was filed. Permission to file the proposed "Amendment to Petition" is denied.

Dated: February 14, 1973.

WOOD
Presiding Justice

APPENDIX "Z-III"

THE COURT: Just a minute. It will stand and the jury will be the ones to decide whether that does, in fact, have any relationship to the outcome of this case.

That is, assuming they find that to be a fact necessary for them to consider in assessing credibility.

THE WITNESS: Now, with respect to my present credit standing, despite the fact that this charge has been—

The COURT: Just a minute. Your credit standing, sir, has no bearing on the issues in this case.

MR. RUMMLER: That is exactly what I wanted to ask your Honor.

If I understand correctly, I can call witnesses as character witnesses, if I understand what you told me, for myself. But, I cannot state anything about my own character.

Is that correct?

THE COURT: That is correct.

MR. RUMMLER: I see.

THE COURT: You are charged in Count II, sir, with a crime that involves the character trait of honesty.

MR. RUMMLER: Yes.

THE COURT: As such, you are entitled to offer testimony that you have good character for honesty, if you wish to do so.

You may do that by calling persons who are familiar with your trait of character for honesty.

MR. RUMMLER: I feel that I am familiar with myself.

THE COURT: Well, I'm sorry, sir, the law does not permit an individual to give testimony as to his own character.

It is permitted, it is character evidence based on his reputation in the community in which he lives and the people with whom he associates as tending to indicate that one who has a good character for honesty would be less likely to commit the crime that involves a character trait of dishonesty.

MR. RUMMLER: Well, I certainly don't want to disobey any order of this Court. I am an in pro per defendant. And it's always been my understanding that when a criminal defendant is being—

MR. CARSTAIRS: I am going to object to this, your Honor. It is argument.

MR. RUMMLER: It is not argument, it is an explanation.

MR. CARSTAIRS: Mr. Rummler has represented himself as being sufficiently skilled and able to act in propria persona. I think it ill-behooves him now to

plead poor-mouth and claim that he just doesn't understand.

MR. RUMMLER: I think it ill—

THE COURT: Suffice it to say, Mr. Rummler, you may not testify to your own character traits.

Proceed, sir.

MR. RUMMLER: Yes. Now, I would like Mr. Carstairs instructed to have the courtesy to not interrupt and cut in the way he does when I'm speaking. It's not done in a court.

I assume he's had sufficient experience in court procedure to know that.

THE COURT: All right. Let's eliminate the colloquy, gentlemen.

If you have an objection, Mr. Carstairs, make the objection and state the grounds. And that will be sufficient.

MR. CARSTAIRS: Yes, your Honor. The only disability that I labor under is that if I wait for the conclusion of the effluvium of Mr. Rummler, it will be too late.

THE COURT: Now, that's not required, Mr. Carstairs. We all labor under some burdens and that's one you will have to bear.

MR. CARSTAIRS: Very well, your Honor.

MR. RUMMLER: Well, in order not to disobey any rules, it has been my understanding that a criminal defendant on the witness stand was encouraged to say anything he saw fit with the view that he might thereby reveal something incriminating.

However, it appears in this case—

THE COURT: Just a moment. Approach the bench with the reporter, please.

(The following proceedings were had at the bench, outside the hearing of the jury:)

THE COURT: Now, Mr. Rummler, as a defendant charged with a crime of theft, if you wish to do so, you may testify that, "I am a thoroughly honest man. I have never done a dishonest thing in my life."

However, if you do that, you open the door to the prosecution to bring forward any evidence that they may have of any past dishonest act that you may have performed.

But. you may not say, "I have a reputation in the community for honesty." That is something you are not qualified to testify to. Only others in the community may testify as to their evaluation of your character.

Do you understand the difference?

MR. RUMMLER: Yes. I will be wanting then two character witnesses Monday. I'm sorry, but I will need them in the morning.

THE COURT: All right. Since you have taken

the stand as a witness, you are also privileged to bring forward any character witness to testify to your character as to truthfulness.

MR. RUMMLER: Yes.

THE COURT: Because your truthfulness is now at issue since you have become a witness.

Here again, if you want to say, "I have never lied in my life," you may do so. If you think the jury will believe that.

MR. RUMMLER: That will be one of my long list of lies, if I said that.

MR. CARSTAIRS: Can a witness comment on his own credibility, your Honor, in that fashion?

THE COURT: Oh, yes. If in cross examination the thrust of the argument is the witness is lying, he may say, "I am not lying. I have never told a lie in my life."

Of course, he opens up the door to the prosecution to be able to prove any past lie that he may have engaged in.

But, he may not say, "I'm known in the community as a truthful person." That he's not competent to testify to. That requires character evidence.